

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

**JAMES D. JOHNSON, as next friend to
Olivia Y., et al.**

PLAINTIFFS

vs.

CIVIL ACTION NO.: 3:04cv251LN

**HALEY BARBOUR, as Governor
of the State of Mississippi, et al.**

DEFENDANTS

**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR
CONTEMPT AND FOR THE APPOINTMENT OF A RECEIVER**

Defendants respectfully move this Court for an Order finding that Plaintiffs' Motion for Contempt and for the Appointment of a Receiver is not well-taken and should be denied. This response is supported by Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion for Contempt and for the Appointment of a Receiver and with Exhibits "A"-"Z" attached hereto.

Respectfully submitted, this the 3rd day of December, 2010.

s/ Dewitt L. ("Rusty") Fortenberry, Jr.
Dewitt L. ("Rusty") Fortenberry, Jr. (MSB #5435)
Kenya Key Rachal (MSB # 99227)
Ashley Tullos Young (MSB # 101839)
BAKER, DONELSON, BEARMAN, CALDWELL
& BERKOWITZ, PC
4268 I-55 North
Meadowbrook Office Park
P.O. Box 14167
Jackson, Mississippi 39211
Telephone: (601) 351-2400
Facsimile: (601) 351-2424

Harold Pizzetta, III, Esq.
Assistant Attorney General
General Civil Division
Carroll Gartin Justice Building
430 High Street
Jackson, MS 39201
Telephone: (601) 359-3816
Facsimile: (601) 359-2003

COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I, Dewitt L. “Rusty” Fortenberry, Jr., do hereby certify that on December 3rd, 2010, I electronically filed a true and correct copy of the foregoing document with the Clerk of court using the ECF system which sent notification of such to counsel as follows:

Shirim Nothenberg
Marcia Robinson Lowry
Jessica Polansky
CHILDREN'S RIGHTS
330 Seventh Avenue, 4th Floor
New York, NY 10001

W. Wayne Drinkwater, Jr.
BRADLEY ARANT ROSE & WHITE LLP
188 East Capitol Street, Suite 450
Jackson, MS 39201

John Lang
John Piskora
LOEB & LOEB, LLP
345 Park Avenue
New York, New York 10154

SO CERTIFIED, this 3rd, day of December, 2010.

/S/ DEWITT L. (“RUSTY”) FORTENBERRY, JR.

INDEX OF EXHIBITS

to Defendants' Response to Plaintiffs' Motion for Contempt and Appointment of Receiver

Exhibit "A"	<i>David C. v. Leavitt</i> , No. 93-C-206, Slip Op (D. Utah, March 17, 1997)
Exhibit "B"	August 4, 2010 Email from Shirim Nothenberg to Kenya Rachal and Rusty Fortenberry re reserving Plaintiffs' right to seek judicial enforcement of Period 2 non-compliance
Exhibit "C"	November 30, 2010 Letter from Shirim Nothenberg to Rusty Fortenberry re Plaintiffs' decision that Defendants did not substantially comply with Bridge Plan requirements
Exhibit "D"	November 29, 2010 Letter from Jerry Milner to Rusty Fortenberry and Kenya Rachal re his position on Defendants' status of compliance with Settlement Agreement
Exhibit "E"	October 3, 2010 <i>Clarion Ledger</i> article "Rights Group: Foster Care Still Lagging" http://pqasb.pqarchiver.com/clarionledger/access/2152609271.html
Exhibit "F"	October 6, 2010 WLBT interview transcript "Foster Care Lawsuit" http://www.wlbt.com/global/story.asp?S=13282234&clienttype=printable
Exhibit "G"	October 6, 2010 MBP interview transcript "A New Lawsuit Says Mississippi Isn't Protecting Foster Children" http://mpbonline.org/news/story/new-lawsuit-says-mississippi-isnt-protecting-foster-children
Exhibit "H"	October 7, 2010 <i>Clarion Ledger</i> article "Welfare Group Asks Court to Intervene in Overseeing Children"" http://pqasb.pqarchiver.com/clarionledger/access/21526331231.html
Exhibit "I"	June 26, 2006 Order of the Court re Confidentiality
Exhibit "J"	Affidavit of Lori Woodruff
Exhibit "K"	June 10, 2010 News Release from the Office of the Governor, Haley Barbour re appointment of Don Thompson http://www.governorbarbour.com/news/archive/news/2008/jun/DHSappointment.htm
Exhibit "L"	Resume of Don Thompson - redacted
Exhibit "M"	Affidavit of Don Thompson
Exhibit "N"	Resume of Lori Woodruff - redacted
Exhibit "O"	July 10, 2008 Email from Shirim Nothenberg to Kenya Rachal acknowledging receipt of Lori Woodruff's resume

Exhibit "P"	August 1, 2008 Email from Shirim Nothenberg to Rusty Fortenberry re acknowledgement of Lori Woodruff's hiring
Exhibit "Q"	Resume of Jerry Milner
Exhibit "R"	Affidavit of Cindy Greer
Exhibit "S"	Resume of Cindy Greer - redacted
Exhibit "T"	MS Dept. of Information Technology Services, RFP #3583 re MACWIS
Exhibit "U"	March 9, 2010 Email from Shirim Nothenberg to Kenya Rachal re RFPs
Exhibit "V"	September 23, 2010 Letter and attachments from Children's Bureau to Don Thompson re 5-year, \$2,000,000 grant for recruitment and retention activities
Exhibit "W"	August 2008 update to MDHS Policy Manual, §F, p 4515
Exhibit "X"	Relative Placement Licensing Schedule, DHS 286694-286706 - under seal
Exhibit "Y"	"Children in Custody with 2 or More Emergency or Temporary Placements" report for July 2010, DHS 285942-286024 - under seal
Exhibit "Z"	"Number of Children in Foster Care by Placement Type" report for July 2010, DHS 284922-285200 - under seal